

REMARKS

Claims 1-33 were examined. In the instant Office Action, the Examiner has raised several issues, which are set forth by number in the order they are addressed herein:

- 1) Claims 7-9, 11, 12, 14, 15, 20 and 27 stand rejected under 35 U.S.C. § 112 second paragraph, as allegedly being indefinite;
- 2) Claims 7-9, 11, 12, 14, 15, 20 and 27 stand rejected under 35 U.S.C. § 101 as allegedly being improper process claims;
- 3) Claims 1-18, 20 and 22-33 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,472,219 to Nieuwenhuis *et al.* (Nieuwenhuis); and
- 4) Claims 19 and 21 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nieuwenhuis.

Applicants hereby amend Claims 1, 7-9, 11, 12, 14, 15, 20 and 27, in order to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments. Applicants reserve the right to prosecute the original, similar, or broader claims in one or more future application(s).

1 & 2) The Claims Are Definite And Proper

The Examiner has rejected Claims 7-9, 11, 12, 14, 15, 20 and 27 under 35 U.S.C. § 112 second paragraph, as allegedly being indefinite, and under 35 U.S.C. § 101 as allegedly being improper process claims. The Examiner states that these claims

provide for the use of the identification label, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. ... [T]he claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process (Office Action, pages 2 and 3).

Applicants respectfully disagree with these rejections. To begin with Applicants respectfully submit that dependent method Claims 7-9, 11, 12, 14 and 15 are proper method claims in that they encompass the “contacting” and “allowing” steps of independent method Claim 1.

Nonetheless, Applicants hereby amend Claims 1, 7-9, 11, 12, 14, 15, 20 and 27, in order to further the prosecution of the present application and Applicants’ business interests, yet without acquiescing to the Examiner’s arguments, while reserving the right to prosecute the original, similar, or broader claims in one or more future application(s). In particular, Applicants have amended method Claim 1 and composition Claim 20 to recite an “identification label that shows certain properties of the plant or plant part upon visualization.” In addition, Applicants have amended method Claims 7-9, 11, 12, 14 and 15, and composition Claim 27 to recite “wherein the identification label shows,” in place of the phrase “wherein the identification label is intended to show” or the phrase “for use in showing,” respectively. Support for these amendments can be found but is not limited to the definition of identification label as a tracer that “is present on or in a plant or plant part and can be used upon visualization to detect certain properties of the plant or plant part” (Specification, page 9, lines 1-5). Applicants believe that the amended claims are definite and proper, and therefore respectfully request that these rejections be withdrawn.

3) The Claims Are Novel

The Examiner has rejected Claims 1-18, 20 and 22-33 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,472,219 to Nieuwenhuis *et al.* (Nieuwenhuis). The Examiner states “Nieuwenhuis et al. teach a method for providing plants and/or plant parts with an identification label, comprising contacting the plant or plant part with a liquid or powder performed by dipping or immersing in a container containing a tracer molecule, comprising one or more types of tracer molecules, and allowing the plant or plant part to take up the tracer molecules either inside the plant or plant parts or on the surface thereof (Col. 2, lines 21-37)” (Office Action, page 3). The Examiner further states that Nieuwenhuis teach the visualization step of Claim 16, the plant or plant parts comprising identification labels of Claims 20 and 22, and the products of Claims 23 and 33 (Office Action, page 4). Applicants respectfully disagree that the pending claims are anticipated by Nieuwenhuis.

In contrast to the characterization of Nieuwenhuis provided by the Examiner, Nieuwenhuis *does not* teach or suggest that a plant or plant part takes up an inert fluorescent label, and therefore *does not* teach or suggest methods or products for providing plant or plant parts with an identification label, or plants or plant parts comprising such labels. Rather Nieuwenhuis simply discloses methods for monitoring the application of treatment products to **water** in which cut flowers are placed. Specifically, step c of the methods of Nieuwenhuis recite “using a fluorometer to measure the fluorescent signal of said insert fluorescent tracer in said water that cut flowers are placed in” (Nieuwenhuis, Column 2, lines 32-34, Column 3, lines 38-40, and Claim 1, Column 7, lines 51-53). Thus, the pending claims directed to identification labels of *plants or plant parts* differ from the disclosure of Nieuwenhuis directed to measuring treatment products in **water**. Thus, without more the claims are clearly novel over the teaching of Nieuwenhuis.

4) The Claims Are Nonobvious

The Examiner has rejected Claims 19 and 21 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nieuwenhuis. The Examiner states

Nieuwenhuis *et al.* is silent as to wherein the tracer molecule is Photine PAQ. Examiner respectfully submits that Nieuwenhuis *et al.* in Column 4 sets forth many if not all the tracer molecules disclosed in Claims 19 and 21 except for Photine PAQ, however, because Photine PAQ is a well known tracer molecule and there is no significant difference in function between Photine PAQ and any of the other tracer molecules disclosed in Claims 19 and 21, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute Photine PAQ for any of the tracer molecules set forth in Claims 19 and 21 to obtain the desired results without undue experimentation (Office Action, pages 5 and 6).

Applicants respectfully disagree that the pending claims are rendered unpatentable by Nieuwenhuis. As discussed above, Nieuwenhuis does not teach or suggest all elements of independent Claims 1 and 20, from which Claims 19 and 21 depend. Briefly in contrast to Claims 1 and 20, Nieuwenhuis does not teach or suggest an identification label that shows certain properties of the plant or plant part upon visualization, or a plant or plant part carrying such a label. Rather the disclosure of Nieuwenhuis is simply directed to monitoring the

concentration of treatment products in water (See, Nieuwenhuis, abstract, Column 2, lines 32-34, Column 3, lines 38-40, and Claim 1, Column 7, lines 51-53).

Applicants contend that the Examiner's assertion that "there is no significant difference in function between Photine PAQ and any of the other tracer molecules disclosed in Claims 19 and 21" is an unsupported conclusory statement. Applicants respectfully submit that the Examiner must provide evidence to support such a conclusion, as unfounded statements are not sufficient to support an obviousness rejection. Thus, without more the claims are clearly nonobvious over the teaching of Nieuwenhuis.

CONCLUSION

Applicants believe the amendments and arguments set forth above traverse the Examiner's rejections and therefore request that these grounds for rejection be withdrawn. However, should the Examiner believe a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect.

Dated: February 28, 2008



Christine A. Lekutis
Registration No. 51,934

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
415.904.6500